MASTER AND SERVANT—INJURIES TO SERVANT THROUGH NEGLIGENCE OF FELLOW SERVANT.—The plaintiff was working at the bottom of a clay pit with vertical walls, at the top of which other employees were engaged in prying off large chunks of clay. It was customary to warn the men below when these chunks were about to fall, but on one occasion the signal was neglected, which resulted in serious injury to the plaintiff. *Held,* that the negligence in failing to give the signal was the negligence of the master, and not that of the fellow servants, the operation being inherently dangerous. *Hanson* v. *Red Wing Sewer Pipe Co.* (Minn. 1913) 142 N. W. 804.

There is marked conflict existing as to the delegability of the master's duty to warn servants of the recurring dangers arising from the dislodging of earth or other heavy substances. *Anderson* v. *Pittsburg Coal Co.,* 108 Minn. 455, 122 N. W. 794, 26 L. R. A. (N. S.) 624. The courts which hold such duty delegable put it on the ground that the master is under an absolute duty only to provide a reasonably safe place to work and, by selecting a competent person to warn of recurring dangers, has done all that the law requires. Any negligence of such co-employee is the act of a fellow servant, for which the master is exempt from liability. *Herman* v. *Port Blakely Mill Co.,* 71 Fed. 853; *Ocean Steamship Co.* v. *Cheney,* 86 Ga. 278, 12 S. E. 351; *Mikoloczak* v. *N. A. Chemical Co.,* 129 Mich. 80; *McLane* v. *Head & D. Co.,* 71 N. H. 294. This view seems to be the weight of authority. COOLEY, TORTS, 1152. There are however many authorities supporting the case under discussion, on the ground that the master's responsibility extends beyond the selection of a competent agent and includes the warning itself, it being considered an absolute duty. But the non-delegability rule is in most cases applied only where the place of work is inherently dangerous. *Belleville Stone Co.* v. *Mooney,* 60 N. J. L. 323; *Evansville & T. H. R. Co.* v. *Holcomb,* 9 Ind. App. 198; *Brice-Nash* v. *Barton Salt Co.,* 79 Kans. 110; *Borgerson* v. *Cook Stone Co.,* 91 Minn. 91; *Anderson* v. *Pittsburg Coal Co.,* supra.

MUNICIPAL CORPORATIONS—LETTING TO LOWEST BIDDER.—A statute required certain municipal contracts to be awarded to the lowest responsible bidder. The city commissioners prescribed certain specifications for materials and advertised for bids for the repaving of a street. It was admitted that plaintiff's bid at $1.52 per square yard for Porter brick was the lowest; that this brick met in every way the requirements of the specifications, and that plaintiff was "responsible." But the commissioners, thinking that Metropolitan brick at $1.81 per square yard so much superior in quality to the Porter brick that its use would in the long run be better for the interest of the city, awarded the contract accordingly. Plaintiff, the lowest bidder, brings certiorari to review the award. *Held,* that since the commissioners' specifications fixed a standard to which plaintiff's brick conformed, plaintiff is entitled to the contract; and that because a brick submitted by a higher bidder was better for the higher price than the lower bid, furnished no justification for the award to the higher bidder. *Mc Govern* v. *Inhabitants of City of Trenton et al.* (N. J. 1913) 86 Atl. 539.

Under the particular circumstances there obtaining, the decision in the

principal case seems just. It is in line with earlier New Jersey cases which take the view that the term "lowest" means simply lowest in figures. *Faist* v. *Mayor of Hoboken,* 72 N. J. L. 361, 60 Atl. 1120. But in *Cleveland etc. Co.* v. *Commissioners,* 55 Barb. 288, the court, taking occasion to construe a statute which declared that contracts should be given to the lowest bidder, said: "It cannot be held that these words should be construed literally. * * * In determining whether a bid is the lowest among several others the quality and utility of the thing offered—in other words, its adaptability for the purpose for which it is required—must be first considered." Where the standard of materials is unavoidably elastic, with the result that two kinds of material both conforming to the standard are offered, it has been held that the contract may be awarded to a person not the lowest bidder, if the officer awarding the contract in good faith deems the material offered by that person better adapted to the work than that offered by a lower bidder. *Louchheim* v. *Philadelphia,* 15 Pa. Dist. 311. Again, it has been held that even under such a statutory provision the municipality is not compelled to award the contract to the lowest bidder. While it cannot give it to any other person, it may, if acting in good faith, refuse to award it to the lowest bidder, reject all the bids and readvertise. *Walsh* v. *Mayor etc. of New York,* 113 N. Y. 142; *Faist et al.* v. *Mayor, etc. of City of Hoboken,* 72 N. J. L. 361, 60 Atl. 1120. The last cited case also stands for the proposition that before the bid of the lowest bidder can be rejected on the charge that he is not responsible, or that other causes exist for the rejection of his bid, he is entitled to a hearing. If the words of the statute are "lowest and best bidder," the authorities uniformly hold that the award may be made to another bidder than the lowest. 28 Cyc. 663.

MUNICIPAL CORPORATIONS—LIABILITY OF MUNICIPALITY IN QUASI-CONTRACT.—Defendant city, having been given power by the legislature to establish and maintain a municipal electric light plant, entered into a contract whereby plaintiff company agreed to, and did, furnish 500 electric light poles, which were accepted by the city and used by it in the construction of the plant. The contract was invalid under the statute, owing to the failure of the council to advertise for bids. Plaintiff brought suit for the reasonable market value of the poles. *Held,* that even though the statutory requirements as to the making of a contract have not been carried out, if the city authorities are vested with the general authority to do the act for the performance of which the materials are supplied, the city is liable for the reasonable value of the property. *Nebraska Telephone Co.* v. *City of Red Cloud* (Neb. 1913) 142 N. W. 534.

The cases on the quasi-contractual liability of municipal corporations are many and seem irreconcilable. As an example of the view contrary to that of the principal case, see *McSpedon* v. *City of New York,* 20 How. Prac. 395; *La France Fire Engine Co.* v. *Syracuse,* 68 N. Y. S. 894. It is well settled, however, that no quasi-contractual liability can attach, if the municipality did not have power to make an express contract of the same general effect as the implied contract sought to be enforced. *Burril* v. *Boston,* 2